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No. 112

In the Supreme Court of the United States

OCTOBER TERM, 1942

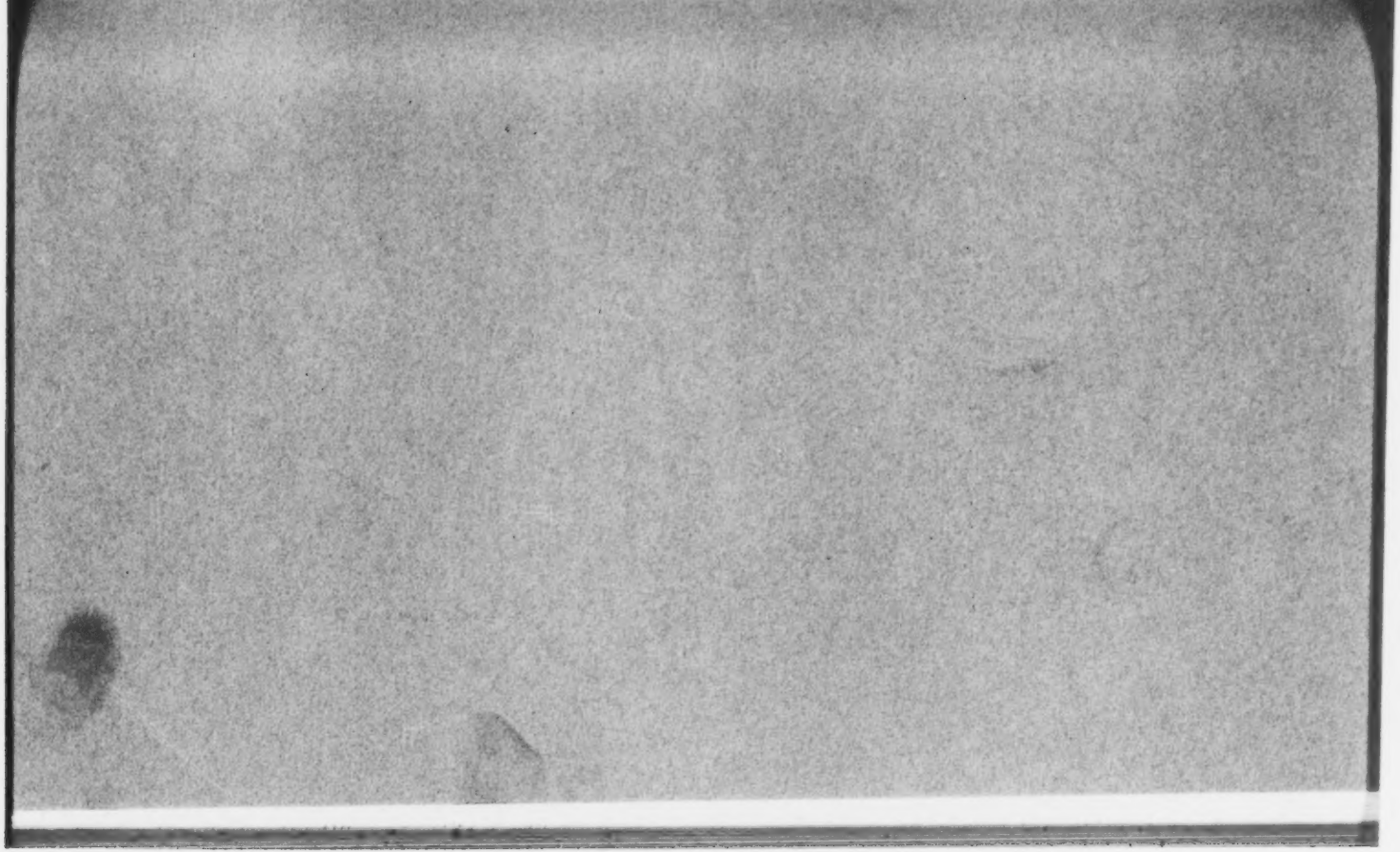
CHESTER C. FOSGATE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION



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OPINIONS BELOW

The oral remarks of the district court (R. 66–67) are not reported. The opinion of the circuit court of appeals (R. 95–100) is reported in 125 F. (2d) 775.

JURISDICTION

The judgment of the circuit court of appeals was entered on February 6, 1942 (R. 100). A petition for rehearing (R. 101) was denied on March 7, 1942 (R. 107). The petition for a writ of certiorari was filed on June 2, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether wages paid by the taxpayer for labor performed in picking and preparing for market citrus fruit grown by others and purchased on the trees at maturity by the taxpayer, were exempt from the tax imposed by Title IX of the Social Security Act as wages paid for "agricultural labor" within the meaning of Section 907 (c) (1) of that Act.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra,* pp. 8–11.

STATEMENT

This is a suit for the refund of taxes paid for the year 1937 under Title IX of the Social Security Act of August 14, 1935, c. 531, 49 Stat. 620. The findings of fact entered by the district court (R. 68–69) may be summarized as follows:

Taxpayer, a corporation operating a citrus fruit packing house in Forest City, Florida, was engaged in purchasing, raising, processing, packing, and selling citrus fruit, and in cultivating groves owned by others (R. 68). Approximately 75 percent of the fruit processed and packed by it was purchased on the trees when ripe and gathered from groves owned and cultivated by others (R. 68–69). This was a commercial and not an agricultural enterprise (R. 69). Smaller amounts of fruit were bought on the trees in groves cultivated by the taxpayer under oral agreements with the owners, or

were gathered from groves owned or leased by the taxpayer. Accordingly, taxpayer had employees engaged variously (a) in cultivating and raising the fruit and (b) in picking, hauling, processing, packing, and selling it (R. 68–69).

The district court divided the employees into three classes for the purposes of determining liability for tax. The first group was made up of employees performing services with respect to fruit from groves owned or leased by the taxpayer. Their wages were held exempt from tax. The services of the second group, employees engaged in raising fruit in groves owned by others but tended by taxpayer, were likewise declared to be agricultural labor and the wages exempt from tax. The third group was made up of employees engaged in picking, hauling, processing, packing, and selling fruit from groves neither owned nor leased by the taxpayer. Their services were held not to be agricultural labor and their wages subject to the tax. Since the taxpayer had failed to show the amount of taxes paid on account of wages for picking and preparing for market fruit from its own groves, the judgment in its favor allowed recovery only for taxes paid on account of wages for services in cultivating and caring for the groves (R. 70–71).

Both parties appealed (R. 72, 85–86). Taxpayer urged that the district court erred in holding the wages of the third class of employees to be subject to the tax. The Government argued that

although the wages of the first class were not taxable, the services of the employees in the second class were not agricultural labor and their wages had been correctly taxed. The circuit court of appeals affirmed the judgment of the district court (R. 100). Because there is no conflict of decisions, the Government does not seek further review of the adverse portions of the judgment below. Consequently, the only question before the Court is whether the employees who picked, hauled, processed, packed, and sold fruit grown in groves which were neither owned nor leased by the taxpayer, were performing "agricultural labor" so that the wages paid them were excepted from social security taxes.

ARGUMENT

The Social Security Act Amendments of 1939[1] laid at rest for the future the question presented by the instant case. Section 614 of the amendments now provides a detailed definition of "agricultural labor." Consequently, the question presented relates only to past years and has a very limited importance. Moreover, as petitioner concedes, there is no conflict of decisions.[2]

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[1] C. 666, 53 Stat. 1360.

[2] The question presented by the Government's appeal below was whether the exemption of "agricultural labor" extends to the employees of one who is engaged in the business of furnishing cultivating services to farmers. That question was decided adversely to the Government but certiorari has not been sought in view of the absence of a conflict. A simi-

The decision below correctly holds that employees engaged in picking, hauling, processing, packing and selling fruit grown in groves neither owned nor leased by the taxpayer, were not performing "agricultural labor" within the meaning of Section 907 (c) (1) of Social Security Act. In so deciding the court followed the Treasury Regulations promulgated under Title IX. Regulations 90, Article 206 (1), in its substance defines "agricultural labor" to exclude activities incidental to commercial enterprises marketing farm products, unless the services are performed by an employee of the owner or tenant of the farm. The generality of the statutory term "agricultural labor" made it unusually suitable for administrative construction. *Textile Mills Corp.* v. *Commissioner,* 314 U. S. 326; *Helvering* v. *Wilshire Oil Co.,* 308 U. S. 90, 102. The regulation is clearly reasonable. Whatever the difficulties of imaginary cases, the employees serving the owner or tenant of a farm generally stand in a very different position from the employees of a merchant or manufacturer who finds it convenient to come to the farm to garner its products. Cf. *North Whittier Heights C. Assn.* v. *National Labor Rela-*

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lar question is now pending in the Ninth Circuit in *Stuart* v. *Kleck*, on appeal by the Government from a decision of the District Court for the District of Arizona, not officially reported, but found in C. C. H. Unemployment Insurance Service, Vol. 1, par. 8939. But even if a conflict should eventually develop upon that question, it would not touch upon the question presented by the instant petition.

tions Board, 109 F. (2d) 76 (C. C. A. 9), certiorari denied, 310 U. S. 632. This was a peculiarly appropriate place to draw the line under Section 907 (c) (1), for it takes account of the practicalities of tax collection, and both the House and Senate Committees had explained that the exemption was dictated by difficulties of collecting the tax if it were imposed upon wages for agricultural labor. See H. Rep. 615, 74th Cong., 1st Sess., p. 53; S. Rep. 628, 74th Cong., 1st Sess., p. 45.

The legislative history of Section 614 of the Social Security Act Amendments of 1939 shows that that section was not intended to be declaratory of the prior law. On the contrary, the committee reports reveal that Congress knew of the prior administrative practice and, accepting it for the past, broadened the exemption for the future. See H. Rep. 728, 76th Cong., 1st Sess., pp. 2, 18, 51–52; S. Rep. 734, 76th Cong., 1st Sess., pp. 2, 19, 61–62. And this is further shown by the express provision, contained in Section 614 alone, that the new definition should not take effect until January 1, 1940.

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[3] See also H. Conference Rep. No. 1461, 76th Cong., 1st Sess., pp. 20–21:

"The managers on the part of the House desire to state that the changes made by this bill with respect to agricultural labor do not take effect until January 1, 1940, and therefore have no effect whatsoever on any litigation now in the courts with respect to what constitutes agricultural labor under present law."

CONCLUSION

There is no conflict of decisions or question of general importance. The petition for a writ of certiorari should be denied.

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JULY 1942.